IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CR No. 295 of 2002

Reserved on: 30.7.2007 **Decided on August 13, 2007**

Rajinder Kumar **..Petitioner.**

Versus

Joginder Singh **….Respondent**

Coram:

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr. O.P.Thakur, Advocate.**

For the Respondent: **Mr. Ajay Sharma, Advocate.**

Surinder Singh,J.

The respondent herein is the "landlord" of the premises, occupied by the petitioner-tenant, which is a shop consisting of one room on the ground floor in Khasra No. 290 in Nadaun, District Hamirpur, hereinafter referred to as the "demised premises".

The landlord aforesaid sought eviction of the tenant on the grounds, firstly, the tenant is in arrears of rent since its induction in the

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? s***

premises in dispute; secondly, the premises in dispute have become unfit for human habitation and thirdly, the premises are bonafide required for carrying out re-construction, which cannot be done without getting the premises vacated.

The petitioner-tenant offered strong resistance to the claim raised by the landlord and denied the grounds pleaded by the landlord. It is specifically stated that the landlord had refused to accept the rent, sent to him through money orders from time to time by his father Sh. Piare Lal his predecessor-in-interest, pursuant to the judgment passed by this Court. He claimed adjustment of Rs.3,000/- in the rent which were spent for construction of the demised premises vide agreement *inter-se* the landlord and his father Piare Lal and submitted that the landlord was not entitled for any interest. The tenant has also taken preliminary objections, regarding concealing of material facts vis-à-vis pleaded estoppel and prayed for the dismissal of the petition. Rejoinder to the said reply was also filed by the landlord.

On the pleadings of the parties, the Rent Controller had framed the following issues:

1. Whether the respondent is in arrears of rent, if so, to what extent? OPP
2. Whether the premises have become unfit for human habitation? OPP
3. Whether the premises are bonafide required by the petitioner for carrying out reconstruction which cannot be carried out without getting the same vacated, as alleged? OPP
4. Whether the petitioner is estopped to file the present petition as alleged? OPR
5. Relief.

Besides examining himself as PW-5, the landlord produced Balbir Chand (PW-1), P.C.Chaudhary (PW-2), B.R.Sharma (PW-3), Sanjay Kumar (PW-4) and Vinod Kumar (PW-6). The tenant examined himself as RW-1 and Prem Chand (RW-2). After going through the evidence and upon hearing the learned counsel for the parties, the learned Rent Controller allowed the petition on all the grounds. Consequently, the tenant was directed to handover the vacant possession of the premises to the Landlord within 60 days from the passing of his order.

Feeling aggrieved and dissatisfied by the impugned order of eviction, the tenant filed an appeal before the Appellate Authority, which was dismissed. Now the instant revision petition has been filed on the grounds that there was no relationship of landlord and tenant qua the shop in question as alleged but their relationship, as such, has been held to exist only qua the land under the shop structure. Both the parties have misread and bypassed the judgment and decree dated 13.3.1997 (Ex.P-II). The shop structure was held to be built up by the father of the petitioner herein with the consent of the landlord. The respodnent's petition ought to have been rejected under Section 18 and 34(3) of the H.P.Urban Rent Control Act. Further that both the courts below did not appreciate the evidence in its right perspective. It was a colourable petition, tenancy could not have been determined in the absence of statutory notice, under section 106 of the Transfer of Property Act. Both the courts below have wrongly held that the tenant was a defaulter.

I have heard the learned counsel for the parties and have carefully gone through the record.

Earlier, the landlord had filed a suit in the court of Sub Judge Ist Class(II), Hamirpur, claiming possession of the disputed place known as "TAUR" situated within the Notified Area Committee, on the ground that the tenant had illegally raised construction in the year 1978-79 and he was a trespasser. Father of the tenant, Shri Piare Lal had admitted ownership of the landlord but set up a plea of tenancy. Suit of the landlord was dismissed and it was held that said Piare Lal was a tenant of the site @ Rs.30 /- per month. The landlord, lost the appeal right up to the High Court.

It is pertinent to note that Rajinder Singh (tenant) while appearing as RW-1 has admitted that the shop was constructed in the year 1978 by his father and the rent of the shop was fixed at Rs.30/- per month. The amount of construction was agreed to be adjusted against the rent. By this statement, it is manifest that the respondent-tenant has admitted himself to be the tenant of the demised premises i.e. the shop, which is situated in the Notified Area Committee, therefore, the contention as raised by the respondent in this revision petition that he was

not a tenant of the demised premises is rejected. That being so, the provisions of Sections 18 and 34(3) of the H.P.Urban Rent Control Act, 1978, has no application in the given circumstances and Section 106 of the Transfer of Property Act is also not attracted at all.

Next it is argued by Sh. O.P.Thakur, learned counsel for the tenant that the landlord has sought possession of the demised premises for his own bonafide use. For that he has neither pleaded not proved the necessary elements that he was not having any other land/ premises for his business in the concerned urban area and also have not evicted such land within five years of the filing of the application.

The premises in question are non-residential. The landlord aforesaid has sought relief that the premises in question are bonafide required by him for carrying out reconstruction, which cannot be done without getting the same vacated as also having become unfit for human habitation. It is in the evidence that the demised premises are Katcha tin roofed structure, in dilapidated condition, and has outlived its life and the Municipal Committee has served a notice

Ex. PW-2/A to demolish the said premises as it is causing danger to the general public. Regarding condition of the demised premises the landlord has examined PW-4 Sanjay Kumar, a neighbour in the adjacent shop, and PW-6 Vinod Kumar. They have corroborated the version of the landlord. The fact of construction of said shop with local material is admitted by the tenant (RW-1). But according to him (tenant) the remaining life of the katcha structure is about 8 years. Further the petitioner-Landlord has led the evidence that he intends to reconstruct the shop for which he had prepared all the documents and it could not be done unless vacated which fact has not been assailed in his cross-examination. It has been held been held in *Chaman Lal and others versus Ramesh Chand and others* : 1998(2)Shim.L.C.3) that once it is proved that the demised premises are very old and made of Katcha bricks and developed cracks, and the landlord is ready to reconstruct it for which he has sufficient funds available and the reconstruction not possible without the shop is vacated, no interference is warranted into the concurrent findings of the courts. It has also been held by the Apex Court in *Prem Chand vs*

Shanta Prabhakar (1998)1 Supreme Court 274 that when the tenanted premises are required bonafide by the landlord for the purposes of building or rebuilding or making thereto any substantial additions or alterations or that building or rebuilding or additions or alterations cannot be carried out without the rented premises being vacated, there is no requirement in such a case to go into the condition of the building. Further in *Jagat Pal Dhawan versus Kahan Singh & others* (2003) 1 Supreme Court Cases 191 it has been held:

> "Section 14(3)(c)of the H.P.Urban Rent Control Act, 1987 provides inter alia that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required bonafide by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite

> funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However, the court may look into such facts as relevant, though not specifically mentioned as ingredients of the ground for eviction, for the purpose of determining the bonafides of the landlord. If a building, as proposed, cannot be constructed or if the landlord does not have means for carrying out the construction or reconstruction obviously his requirement would remain a mere wish and would not be bonafide."

Since Section 14(3)(c) of the H.P.Urban Rent Control Act, 1987 does not have essential ingredients as submitted by the learned counsel for the tenant yet the court has to see the bonafides of the landlord. As already stated above the shop in question is located in Notified Area Committee and is a katcha structure. The landlord intends to construct a modern shop, the map is Ex.PW-1/A. Therefore, his bonafides cannot be

doubted. There are concurrent findings of the authorities below to this effect. Therefore, in my considered opinion no illegality has been committed by both the authorities below as such no interference is called for in this revision, as such it is dismissed. Interim order dated 9.10.2002 stands vacated.

The tenant is, however, granted three months time from today to vacate the demised premises, provided he tenders up to date arrears of rent within four weeks from today. This shall include the amount for use and occupation for the period of three months which is being granted by this Court.

Parties to bear their own costs.

August 13,2007 (Surinder Singh),J.
(D)